

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RINCON & ASSOCIATES,

Plaintiff,

v.

TOYOTA MOTOR SALES

Defendant.

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Civil Action No. _____

DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S
NOTICE OF REMOVAL

Defendant Toyota Motor Sales, U.S.A., Inc. (incorrectly sued as “Toyota Motor Sales”) (“TMS”) files this Notice of Removal pursuant to 28 U.S.C. § 1441 *et seq.* and states as follows:

I. INTRODUCTION

1. Plaintiff Rincon & Associates (“Rincon”), commenced an action against TMS styled *Rincon & Associates v. Toyota Motor Sales*, Cause No. DC-11-13201, in M-298th Judicial District Court, Dallas County, Texas. The first date upon which TMS received a copy of the original petition was October 20, 2011, when TMS was served with a copy of the petition and summons by process server via its registered agent for service of process.

II. THIS NOTICE IS TIMELY FILED

2. TMS has filed for timely removal within thirty (30) days of receipt of a copy of the initial pleading and summons setting forth a claim for relief upon which such action is based. 28 U.S.C. § 1446(b). Upon filing this Notice of Removal, TMS will provide written notification to Rincon and will file a copy of this Notice of Removal with the District Clerk for Dallas County, Texas.

III. JURISDICTION

3. Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant” Pursuant to 28 U.S.C. § 1332, this Court has original jurisdiction over all civil actions where (1) the amount in controversy exceeds \$75,000, exclusive of interest and costs, and (2) the suit is between citizens of different states. *See* 28 U.S.C. § 1332(a).

A. Amount in Controversy

4. The amount in controversy requirement is met. Where a plaintiff’s petition does not include a specific monetary demand, the defendant meets its burden of establishing that the amount in controversy exceeds \$75,000 when “(1) it is apparent from the face of the petition that the claims are likely to exceed \$75,000, or alternatively, (2) the defendant sets forth ‘summary judgment type evidence’ of facts in controversy that support a finding of the requisite amount.” *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002).

5. Here, Rincon seeks actual damages in connection with its claim that, *inter alia*, TMS allegedly misappropriated the subject matter of a contract, worth approximately \$782,635, which Rincon alleges was a trade secret, and supplied that information to third parties. Pet. §§ IV(A) & (C), V(A) & (E). In addition to actual damages, Rincon also seeks exemplary damages and attorneys’ fees. Pet. §§ VII, VIII; *see Grant v. Chevron*, 309 F. 3d 864, 873-34 (5th Cir. 2000) (finding that when attorney’s fees are recoverable by statute, they are includable in calculating the amount in controversy). Thus, the amount sought by Plaintiff in this case is well in excess of \$75,000.

B. Diversity of Citizenship

6. Complete diversity exists between the plaintiff and the defendant in this case.

a. Plaintiff Rincon is a citizen of Texas, as it is a sole proprietorship with its

principal place of business in Dallas County, Texas. *See* Pet. §II.

b. Pursuant to 28 U.S.C. § 1332(c)(1), a corporation is deemed to be a citizen of any state in which it is incorporated and the state in which it has its principal place of business. Defendant TMS is a foreign corporation organized and existing under the laws of the State of California, with its principal place of business located at 19001 S. Western Avenue, Torrence, CA 90501. *See* Pet. §II. Therefore, TMS is a citizen of California—not Texas—and complete diversity exists between the parties.

V. VENUE IS PROPER

7. As required by 28 U.S.C. § 1441, M-298th Judicial District Court, Dallas County, Texas, falls within the geographical purview of this Court.

VI. COPY OF THE STATE COURT'S FILE IS ATTACHED

8. Pursuant to 28 U.S.C. § 1446(a), the following documents are filed herewith: (1) an index of all matters being filed with this Notice of Removal is attached as Exhibit A; (2) the District Court Civil Docket Sheet is attached as Exhibit B; (3) true and correct copies of all process, pleadings and any orders served upon TMS in this matter are attached as Exhibit C; (4) Certificate of Interested Parties is attached hereto as Exhibit D.

9. Upon the filing of this Notice of Removal, TMS also provided written notice of this removal with proof of service of same attached hereto all parties. A copy of this Notice of Removal is also being filed with the District Clerk of Dallas County, Texas in which this cause was originally filed.

WHEREFORE, Defendant Toyota Motor Sales, U.S.A., Inc. removes Cause No. DC-11-13201 to the United States District Court for the Northern District of Texas. TMS respectfully requests that this Court place this action on its docket for further proceedings as though it has originated in this Court and that this Court issue all necessary orders.

Dated: November 10, 2011

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

/s/ Winstol D. Carter, Jr.

Winstol D. Carter, Jr.

State Bar No. 03932950

wcarter@morganlewis.com

F. Teresa Garcia-Reyes

State Bar No. 24045918

tgarcia-reyes@morganlewis.com

1000 Louisiana Street, Suite 4000

Houston, Texas 77002

713.890.5000 Telephone

713.890.5001 Facsimile

*Attorneys for Defendant Toyota Motor Sales,
U.S.A., Inc.*

OF COUNSEL:

MORGAN, LEWIS & BOCKIUS LLP

Rachel Morgan

Texas Bar No. 24013197

1717 Main Street, Suite 3200

Dallas, Texas 75201-7347

rachel.morgan@morganlewis.com

214.466.4000 Telephone

214.466.4001 Facsimile

CERTIFICATE OF SERVICE

I certify that on November 10, 2011, a true and correct copy of the foregoing document was served on all counsel for all parties via certified mail, return receipt requested:

Marcos G. Ronquillo
D. Todd Parrish
Tandy V. Jouret
GODWIN RONQUILLO PC
1201 Elm Street, Suite 1700
Dallas, TX 75270-2041

/s/ Winstol D. Carter, Jr.

Winstol D. Carter, Jr.